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BRIEF FOR PETITIONERS

IN THE

Supreme Court of the United States

October Term, 1978

No. 78-690

KATHLEEN R. REITER, individually and as representative of the Class of All Personal Users of Hearing Aids located in the United States,

Petitioner,

vs.

SONOTONE CORPORATION, a New York corporation; BELTONE ELECTRONICS CORPORATION, an Illinois corporation; DAHLBERG ELECTRONICS, INC., a Minnesota corporation; TEXTRON INC., a Delaware corporation; and RADIOEAR CORPORATION, a Delaware corporation,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CEI CERTIORARI

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IN THE

Supreme Court of the United States

October Term, 1978
NO. 78-690

KATHLEEN R. REITER,

Petitioner,

vs.

SONOTONE CORPORATION, et al.,

Respondents.

BRIEF FOR PETITIONERS

Petitioner, a consumer, petitioned this Court to issue a Writ of Certiorari to review the decision of a two judge panel[1] of the Eighth Circuit filed on June 19, 1978, denying standing to consumers of the United States under Section 4 of the Clayton Act. A Petition for Rehearing En Banc was denied on August 11, 1978, by a 4-3 split in the Court. The petition was granted on January 8, 1979.

[1] Judge Webster heard argument but took no part in the decision.

OPINIONS BELOW

The Statement by the three judges favoring a rehearing *en banc* is reported at 1978-1 Trade Cases para. 62,183. The opinion by the two-judge panel is reported at 579 F.2d 1077. The opinion by the Honorable Earl R. Larson, of the District of Minnesota, is reported at 435 F. Supp. 933. The opinions are printed in the Appendix to the Petition for a Writ of Certiorari at pages A-31, A-12 and A-2, respectively.

JURISDICTION

On June 28, 1977, the Eighth Circuit, pursuant to 28 U.S.C. Sec. 1292 (b), granted the defendant companies' application for leave to take interlocutory appeal, from which the appeal was perfected. The date of the entry of the judgment of the two judge panel of the Eighth Circuit was June 19, 1978. The plaintiff consumer's Petition for Rehearing En Banc was denied by Order entered August 11, 1978, with three of the seven judges dissenting therefrom. The Petition for a Writ of Certiorari was filed on October 24, 1978, and the writ was granted on January 8, 1979. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Sec. 1254(1).

STATUTE INVOLVED

Section 4, Clayton Act. (October 15, 1914, Chap. 323, Sec. 4, 38 Stat. 731; 15 U.S. Code, Sec. 15.)

Sec. 4. That any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained and the cost of suit, including a reasonable attorney's fee.

QUESTION PRESENTED

Are not consumers who purchase price-fixed goods for personal use injured in their "property" within the meaning of Section 4 of the Clayton Act?

STATEMENT OF THE CASE

The best description is found in the concise statement by the Honorable Earl R. Larson in his Memorandum Order of March 31, 1977, wherein he upheld consumers after describing the case as follows:

> Plaintiff, along with all potential members of the class she seeks to represent, is a purchaser of a hearing aid manufacturered by one of the defendants and distributed by methods that allegedly contravene the antitrust laws. She is not in any business related to that of defendants or their distributors and alleges no property interest other than that of an individual who, because of defendants' actions, was forced to part with more money to purchase a hearing aid than she would have had to pay had they not engaged in allegedly illegal business practices. *She is the classic consumer plaintiff.* (emphasis herein) (Cert. Pet. A-3)

SUMMARY OF ARGUMENT

Mr. Justice Holmes could not have made it more clear when he said that:

> "The facts gave rise to a cause of action under the Act of Congress. . . . [The City] was injured in its property, at least, if not in its business of furnishing water, by being led to pay more than the worth of the pipe. A person whose property is diminished by a payment of money wrongfully induced is injured in his property. . . .
>
> "A man is injured in his property when his property is diminished."[2]

The Courts, Congress and antitrust legal scholars have justifiably assumed[3] that consumers could recover under section 4 of the Clayton Act. Congress provided for "opt out in the 1976 parens patriae legislation which the Circuit herein has now made appear silly if no separate right of private action exists. (sec. 4 C (b) (2) of 15 U.S.C. sec. 15 c) The question is raised *directly* now to this Court only because of misinterpretation by the four Eighth Circuit judges of certain judicial comments.[4]

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[2] *Chattanooga Foundry & P. Works v. Atlanta,* 203 U.S. 390, 396 (1906); Cf. *Congress Building Corp. v. Loew's Inc.,* 246 F. 2d 587, 594 (7th Cir. 1957); *Utah Gas Pipelines, Corp. v. Natural Gas Co.,* 233 F. Supp. 955, 964 (D. Utah 1964).

[3] Eg. See Jay, *Parens Patriae An Effective Consumer Remedy In Antitrust,* 16 Washburn Law Journal 135, fn. 3 (1976).

[4] Eg. Cert. Pet. A-22, the Panel cites only one sentence from this Court in *Hawaii v. Standard Oil Co.,* 405 U.S. at 264, (1972).

ARGUMENT

"This issue *will undoubtedly be decided by the Supreme Court,* and to the extent that it is possible to divine the result, *I conclude that the Court believes that retail consumers do have standing to sue under the Clayton Act . . . .*

In short, both the dicta and the presuppositions in the recent Supreme Court opinions suggest that *the Court will hold* that a consumer such as the present plaintiff may sue under the Clayton Act."

The quotation is from the opinion by Judge Nickerson in *Theophil v. Sheller—Globe Corp.,* 446 F. Supp. 131, 135 (E.D. N.Y. 1978). (emphasis herein) He lined up with the many other Judges that have cited and followed Judge Larson herein.[5] To this date, no Circuit Court, other than the *Eighth* herein, has decided the question. The District Judge that has not followed Judge Larson herein is Judge Williams of the Northern District of California in a "triology" of opinions cited in the Panel opinion herein.[6]

In a Memorandum Opinion, July 5, 1978, Judge Richey again had the question before him in the *Ampicillin Antitrust Litigation,* M.D.L. Dkt. No. 50, Misc. 45-70 (D.C. 7/5/78) and again concluded as follows:

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[5] See also;
In re Ampicillin Antitrust Litigation, 1977-1 Trade Cases Para. 61,434 (D.C. 5/17/77); *De Gregario v. Segal,* 443 F. Supp. 1257 (E.D. Pa. 1978); *Kaplan v. Rolex,* Los Angeles Superior Ct. CA000,-467, Minute Order by Judge David Thomas 8/11/78; *In re Petroleum Products Antitrust Litigation,* 1977-2 Trade Cases Para. 61,639 (C.D. Cal. 9/16/77); *Rosack v. Volvo of America Corp.,* 1977-1 Trade Cases Para. 61,395 (Cal. Superior Ct. 3/16/77).

[6] The Ninth Circuit, by Order dated December 8, 1978, has withheld submission pending decision by this Court herein. *Weinberg v. Federated Dept. Stores, Inc., et al.,* No. 77-1547.

"The Court concludes, based on *Hawaii v. Standard Oil Co.*, 405 U.S. 251 (1972); *In re Petroleum Products Antitrust Litigation*, 1977-2 CCH Trade Cas. Para. 61,639 (C.D. Cal. 1977); and *Reiter v. Sonotone*, 435 F. Supp. 933 (D. Minn. 1977), that the prevailing and better view is that these plaintiffs do have standing to seek treble damages under Para. 4 of the Clayton Act."

The commentary by the District of Columbia Circuit Court should be added to the list. *Cleary v. Chalk*, 488 F. 2d 1315, 1319 n. 17 (D.C. Cir. 1973), *cert. den.*, 416 U.S. 938 (1974).

In his widely cited treatise on antitrust law, Professor Sullivan has expressed his view that:

"Analysis suggests that a non-business consumer who has paid a higher price because of an anti-trust violation also has a cause of action under section 4."

He goes on to discuss Mr. Justice Holmes and Congress and concludes:

"This rationale clearly covers the 'property' of an ultimate consumer as well as that of a business firm. *Courts and commentators seem to have accepted this position without much discussion.*" (emphasis herein)

The professor then considers that the opinions of this Court in *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 264 (1972) and *Hanover Shoe, Inc. v. United Shoe Machinery Corp.*, 392 U.S. 481, 494 (1968) support consumer standing. See L. Sullivan, Antitrust 771 n. 3 (1977).

The Panel opinion tries to lay the blame on Mr. Justice Marshall's passing comment in *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 264 (1972) where he had said:

"Like the lower courts that have considered the meaning of the words 'business or property' we conclude that they refer to commercial interests or enterprises."

Anyone familiar with the antitrust decisions of the Supreme Court would find it cruel indeed to rely in particular on a statement by Mr. Justice Marshall to *deny* consumers standing under the antitrust laws. Further on in that opinion he raises a stentorian call-to-arms for classes of private citizens such as the consumer class herein. The opinion proclaimed in conclusion:

"We note in passing the State's claim that the costs and other burdens of protracted litigation render private citizens impotent to bring treble-damage actions, and thus that denying Hawaii the right to sue for injury to her quasi-sovereign interests will allow antitrust violations to go virtually unremedied. Private citizens are not as powerless, however, as the State suggests.

Congress has given private citizens rights of action for injunctive relief and damages for antitrust violations without regard to the amount in controversy. 28 USC §1337; 15 USC §15. Rule 23 of the Federal Rules of Civil Procedure provides for class actions that may enhance the efficacy of private actions by permitting citizens to combine their limited resources to achieve a more powerful litigation posture. The District Court dismissed Hawaii's class action only because it was unwieldy; it did not hold that a State could never bring a class action on behalf of some or all of its consumer citizens. Respondents, in moving to dismiss count three of the fourth amended complaint, in which the State sought to bring such an action, virtually conceded that class actions might be ap-

propriate under certain circumstances. The fact that a successful antitrust suit for damages recovers not only the costs of the litigation, but also attorneys' fees, should provide no scarcity of members of the Bar to aid prospective plaintiffs in bringing these suits.

Parens patriae actions may, in theory, be related to class actions, but the latter are definitely preferable in the antitrust area. Rule 23 provides specific rules for delineating the appropriate plaintiff-class, establishes who is bound by the action, and effectively prevents duplicative recoveries."
405 U.S. 265, 266.

The Panel herein cites the *Pfizer, Inc. v. Government of India,* 54 L.Ed.2d 563 (1978) opinion many times. However, the Panel overlooked the key phrase in the *Pfizer* opinion which, of course, is the one stating that:

"Clearly therefore, Congress did not intend to make the treble damage remedy *available only to consumers* in our own country". (54 L. Ed. 2d 563, at 570) (emphasis herein).

This Court could not have made itself more clear. Indeed, if one reads the Panel opinion in footnote 12 where *Pfizer* is first cited, one would have to believe that the Panel was bound to affirm Judge Larson, cf. *Brunswick Corporation v. Pueblo Bowl-O-Mat, Inc.,* 429 U.S. 477, Footnote 10 (1977); *Goldfarb v. Virginia State Bar,* 421 U.S. 733, 782, 783, 787, 788 and 792 (1975); *Hawaii v. Standard Oil Co.,* 405 U.S. 251, 264 (1972); *Mandevill Island Farms, Inc. v. American Crystal Sugar Co.,* 334 U.S. 219, 236 (1948).

The question herein emanated from the opinion by Judge Henley while still a District judge, in *Ragar v. T. J. Raney and*

Sons, 388 F.Supp. 1184, 1187 (E. D. Ark), aff'd, 521 F.2d 795 (8th Cir. 1975).

See this Petitioner's counsel's letter back on November 5, 1975, to Judges Matthes, Heaney, Stephenson and Henley (Pet. Add. p. 2). From that date forward, the Eighth Circuit had the question in mind. The Panel bootstraps itself here. Judge Williams cited and relied on the *Ragar* opinion and the Panel recognizes that reliance (Pet. A-22, fn. 11). Now, based upon the fact that Judge Williams "examined" the "language" in *Ragar,* the Panel goes full circle and cites and relies on *Ragar* as "approved" language in the Eighth Circuit. (Pet. A-23). This is done with no recognition of the four other judges, each following Judge Larson, who had already examined the language of *Ragar* and did not apprehend it as a bar to consumers.

It is perhaps most confusing that just four days before the Panel opinion herein, Judge Henley wrote the antitrust opinion in *Stifel, Nicolaus & Company. v. Dain, Dalman & Quail,* 1978-1 Trade Cases para. 62,094 (8th Cir. 1978). In footnote one in *Stifel* Judge Henley described section four of the Clayton Act as follows:

"Section 4 of the Clayton Act of 1914, 15 U.S.C. para. 15, gives to an *individual* who is *injured* as a result of violations of para. 1 or para. 2 of the Sherman Act a *private* cause of action in which, if successful, he may recover treble damages, costs and an attorney's fee."

Supra, at page 74,793 (emphasis herein). Petitioner finds it particularly significant that Judge Henley used the term "individual" rather than the statutory term "person". Consumers are "individuals" whereas corporate businesses are not. It is ironic that Judge Larson sat by designation in *Stifel.* Judge

Larson certainly would have expressed objection had Judge Henley apprehended section 4 differently than had Judge Larson herein. The definition in *Stifel* is what this Petitioner anticipated from Judge Henley and it should have dictated the result just four days later herein.

The legislative history of section 4 of the Clayton Act and its predecessor statute has recently been analyzed by this Court in footnote 10 of the opinion in *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477 (1977).[7] The references therein by this Court clearly favor consumer standing herein.

> "10. Treble damage antitrust actions were first authorized by § 7 of the Sherman Act, 26 Stat 210 (1890). The discussions of this section on the floor of the Senate indicate that it was conceived of primarily as a remedy for '[t]he people of the United States as individuals,' especially consumers, 21 Cong Rec 1767 (1890) (remarks of Sen. George); see id., at 2612 (Sens. Teller and Regan), 2615 (Sen. Coke), 3146-3149. Treble damages were provided in part for punitive purposes, id., at 3147 (Sen. George), but also to make the remedy meaningful by counterbalancing 'the difficulty of maintaining a private suit against a combination such as is described' in the Act. Id., at 2456 (Sen. Sherman).
>
> When Congress enacted the Clayton Act in 1914, it 'extend[ed] the remedy under §7 of the Sherman Act' to persons injured by virtue of any antitrust violation. HR Rep No. 627, 63d Cong, 2d Sess, 13 (1914). The initial House debates concerning provisions related to private damage actions reveal that these actions were conceived primarily as 'open[ing] the door of justice to every man, whenever he may be injured by those who violate the antitrust laws, and giv[ing] the injured party ample damages for the wrong suffered.' 51 Cong Rec 9073 (1914) (remarks of Rep. Webb); see e.g., id., at 9079 (Rep. Volstead), 9270 (Rep. Carlin); 9414-9417, 9466-9467, 9487-9595. The House debates following the conference committee report, however, indicate that the sponsors of the bill also saw treble damage suits as an important means of enforcing the law. Id., at 16274-16275 (Rep. Webb), 16317-16319 (Rep. Floyd). In the Senate there was virtually no discussion of the enforcement value of private actions, even though the bill was attacked as lacking meaningful sanctions, e.g., id., at 14818-14821 (Sen. Reed), 16042-16046 (Sen. Norris)."

[7] It was also analyzed in *Pfizer v. Government of India*, 54 L.Ed.2d 563 (1978).

At this point, one can trace the statement by Justice Marshall in *Hawaii, supra,* right back to the only court decision squarely on this very question. Justice Marshall cited (405 U.S. at 264) three cases, the second of which is *Hamman v. U.S.*, 267 F.Supp. 420 (D. Mont. 1967) where survivors of accidently killed construction workers were denied loss of consortium because it was held not to be an antitrust-type property interest. In *Hamman* the Court noted 267 F.Supp. at 432, that the plaintiff correctly cited *Waldron v. British Petroleum Co.*, 1964 CCH Trade Cas. p. 71,165 (S.D.N.Y. 62364) for the principle that "property" is a much broader term than "business". The court in *Waldron, supra,* had expressly held:

> "The above analysis would be dispositive of this issue if §4 of the Clayton Act protected only a person injured in his 'business.' However §4 has a broader sweep. It provides that 'any person who shall be injured in his business *or property* . . . may sue' (Emphasis original.)

The majority of cases cited by defendants do not advert to the distinction between 'business' and 'property' for the simple reason that that distinction was not in issue in those cases, as it is here.

The statute explicitly uses the words 'business or property' in the disjunctive.[8] Congress intended this distinction to be meaningful. The word 'property' has wider scope and is more extensive than the word 'business.' Less is required to prove 'property' than to prove 'business.'

The statute does not set up a qualitative or quantitative test to determine the existence of 'property.' Nor does the statute contain a built-in definition.

The word 'property' is, in a sense, a conclusory term, i.e., an interest which the law protects. A determination whether plaintiff has 'property' involves a value judgment as to whether that which plaintiff factually possesses should be legally protected. If it be decided that the rights, privileges and powers possessed by plaintiff should receive judicial sanction, that conclusion would be expressed by declaring that plaintiff possesses 'property.' "

That court held that plaintiffs' contract was "property", although not a "business" because incipient, and afforded standing.

The Seventh Circuit followed *Chattanooga Foundry, supra,* and said in *Congress Building Corp. v. Loew's Inc.,* 246 F.2d 587, 594, that the "business" argument need not be considered since the plaintiff was injured in his property, because, *"A man is injured in his property when his property is diminished".* (Emphasis herein). *Utah Gas Pipelines Corp. v. Natural Gas Co.,* 233 F.Supp. 955, 964 (D.Utah, 1964).

[8] Blacks Law Dictionary, Revised 4th Edition notes under "DISJUNCTIVE TERM" that it "is usually expressed by the word 'or'."

Finally, on this point, Judge Neville, late of the District of Minnesota, cited and followed the oft-quoted statement of Mr. Justice Holmes. See *Minnesota v. U.S. Steel Corp.,* 299 F.Supp. 596, 604 (D. Mn. 1969) where Judge Neville also noted that:

> "Yet, as a practical matter, a suit by a governmental claimant who is a purchaser not engaged in business for profit is probably limited to the increased costs theory of damages."

In other words, non-business plaintiffs such as consumers herein, measure their damage by the amount of the overcharge.

The Ninth Circuit very recently cited the legislative intent to be the "maximization of consumer welfare" in *Boddicker v. v. Arizona State Dental Assn.,* 1977-1 CCH Trade Cas. para. 61,258 (9th Cir. 1/6/77) fn. 10 on p. 70,797:

> "In an exclusive study of the legislative intent underlying the Sherman Act, Professor Robert H. Bork, the current Solicitor General of the United States, concluded:
>
> '[T]he legislative history, in fact, contains no colorable support for application by courts of any value, premise or policy other than the maximization of consumer welfare.' Bork, *Legislative Intent and the Policy of the Sherman Act,* 9 J. Law & Econ. 7, 10 (1966)."

The Congressional Record is replete with references to consumers being given standing. Before Section 4 of the Clayton Act, we had Section 7 of the Sherman Act, the first version of which was criticized for not being strong enough for *consumers* suing large corporate violators. See remarks by Senators Coke, Hiscock and Teller in 21 *Cong. Rec.* 2615, 2571 and 2572 respectively.

Senator Sherman said the intent of Section 2, the harbinger of Section 7, was to give "private parties a remedy for personal injury" caused by a violation. 21 *Cong. Rec.* 2456. Senator George made it clear that under Section 7, a consumer was thought to be "the party necessarily demnified or injured". 21 *Cong. Rec.* 1767-68.

The redraft of Section 7 strengthened the hand of consumers by providing for *treble* damages and expressed "business or property" injury. 21 *Cong. Rec.* 2901. At the time he presented the redraft to the Senate, Senator Hoar simply stated "I shall not undertake to explain the bill, which is well understood." 21 *Cong. Rec.* 3145.

This Court has previously noted in *U.S. v. Cooper Corp.*, 312 U.S. 606 (1941), the remarks by senator Sherman when he said as follows:

> 'But the second section provides purely a personal remedy, a civil suit also by citizens of the United States.' (312 U.S. at 612)

That opinion then notes that section 2 was "retained, with slight changes." (312 U.S. at 612). Earlier the opinion had noted that ". . . a private purchaser is given a remedy for his losses in treble damages . . ." 312 U.S. at 608, cf. fn. 17, 312 U.S. at 612. This Court found it significant that in the fifty years the statute had been in force no such action had been instituted. 312 U.S. at 613-14. Similarly herein, no such motion had ever been brought directly.

It is also significant that in the opinion in that case this Court warned that

> ". . . it is not for the courts to indulge in the business of policy making in the field of antitrust legislation." 312 U.S. at 606.

The Panel herein seem to have not heeded this warning. Indeed, it has become obvious that there is a deep policy rift in the Circuit. The policy comment by the Panel about "gigantic consumer class actions" (made right after extolling the "significant" 1976 legislation providing for government representation of such gigantic consumer class actions) is irrelevant to the question herein. (Cert. Pet. A-28-29). The same policy consideration was applied against an individual citizen by the same four judges in deciding a "long-arm" jurisdiction question in the product liability case of *Hutson v. Fehr Brothers, Inc.*, 584 F.2d 833 (8th Cir. 1978). The same three judges dissented, as herein, with Judges Lay and Heaney concluding in additional dissenting comment that:

> "The majority decision is a giant leap backward in the law." 584 F.2d at 841.

There simply was no substantive change as defendants attempted to argue below. Senator Morgan had commented that a *personal* remedy was being given to *whoever* may be injured in his business or property. (Emphasis herein.) 21 *Cong. Rec.* 3149.

Significantly, the Senate debate after the redraft of Section 7 concerned possible amendment to then provide for *class* actions by consumers (who obviously therefore must have had individual standing). 21 *Cong. Rec.* 3147-51. The concerned remarks about practicality of consumer suits noted by defendants (Dr. Br. 17-18) were to strengthen the provision and did *not* concern the question of standing.

Section 4 of the Clayton Act was only a reenactment of Section 7. See 51 *Cong. Rec.* 9164; 14,214; 15,938; 16,319; House Report No. 627 at p. 36; Senate Report No. 698.

This Court said in *Illinois Brick v. State of Illinois*, 431 U.S. 720 (1977) that the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. No. 94-435, 90 Stat. 1383, 1394-96 (1976):

> ". . . did not alter the definition of which overcharged persons were injured within the meaning of Section 4. It simply created a new procedural device—parens patriae actions by States on behalf of their citizens—to enforce existing rights of recovery under Section 4". (emphasis herein) 431 U.S. at 733 n. 14.

The *Illinois Brick* opinion also noted actions "by ultimate consumers," such as "homeowners", 431 U.S. at 740 and 741, esp. Fns. 23 and 24.

The amicus brief by the Department of Justice in support of the Petition herein emphasizes the great public interest at stake in private antitrust enforcement. This Court has called the antitrust laws the "magna carta" of the free enterprise system and recently noted "a congressional policy favoring private enforcement of the antitrust laws" and added that "*undoubtedly there exists a strong national interest in antitrust enforcement*". *Vendo Co. v. Lektro-Vend Corp.*, 433 U.S. 623, at 635 (1977). (emphasis herein). A recently concluded study by the Center For Econometric Studies Of The Justice System, Hoover Institution, Stanford University (December 1978). That study was titled THE DETERRENT EFFECT OF ANTITRUST ENFORCEMENT: A THEORETICAL AND EMPIRICAL ANALYSIS. In a letter to this counsel, Mr. Michael K. Block, Director of the Center, expressed the conclusion that antitrust enforcement deters price fixing behavior "only when there is a credible threat of a private action". Mr. Block's letter is reprinted herein for the convenience of this Court (A-1).

Foreign governments have standing to sue as consumers and because of the reasoning of the Panel herein in attempting to rationalize away Mr. Justice Holmes' opinion in *Chattanooga Foundry*, such governments are now guaranteed continued standing while American consumers are to be denied access to the Courts of this nation. Such a result is incredible and this Court should strike it down forcefully on behalf of the people. The Eighth Circuit is split four to three and the Panel should be reversed accordingly.

CONCLUSION

A law review writer recently noted that the decision of the Panel herein "frustrates the goals of the antitrust laws and in many instances will allow antitrust violations to go unchecked."[9] O'Daniel, *Judicial Interpretation of Private Standing Under Section 4*, 31 Vanderbilt Law Review No. 6, 1542, at 1549 (November 1978). Petitioner asks that this Court reverse the 4-3 result of the Eighth Circuit by making it clear that commercial or competitive injury is *not* a prerequisite to an action for damages under Section 4 of the Clayton Act.

Dated: February —, 1979.

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[9] In *Pfizer v. Government of India, supra*, this Court noted the defeat of such goals and denial of just compensation if *foreign* governments were denied the right to sue. 54 L.Ed.2d at 570. Surely American citizens should not then be denied.

ADDENDUM

HOOVER INSTITUTION
ON WAR, REVOLUTION AND PEACE
Stanford, California 94305

January 16, 1979

Mr. John F. Thomas
Cochrane & Bresnahan, P.A.
Suite 500
Cochrane & Bresnahan Building
360 Wabasha Street
St. Paul, Minnesota 55102

Dear Mr. Thomas,

I recently read that the Supreme Court has granted certiorari to *Reiter v. Sonotone Corporation.* This case is of particular interest to us at the Center because we have just completed an empirical analysis of the deterrent effect of antitrust enforcement. We find that such enforcement deters price fixing behavior only when there is a credible threat of a private action. It is the class action, with its attendant large damages/settlements, that appears to deter price fixing. I think you will find the enclosed report on our research of considerable interest.

Sincerely,
MICHAEL K. BLOCK
Director, Center for
Econometic Studies
of the Justice System

MKB/kw
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